

operation as having been paid on a piece rate basis. However, considering the context in which the term is used, such recognition must be on the part of agricultural employers and employees and other individuals in the region of employment who are familiar with farming operations and practices in the region and the method of compensation utilized in such operations and practices.

§ 780.315 Local hand harvest laborers.

(a) A requirement of the exemption is that an employee must commute each day from his permanent residence to the farm where he is employed. Thus, the exemption does not apply to a migrant worker who travels to different areas of the country during the harvesting seasons. This would be true even though the worker may remain in the area for a considerable period of time. On the other hand, if a migrant worker actually changes his place of residence and thereafter commutes daily from his permanent residence, the exemption applies from the date of the change of residence if the other tests are met.

(b) The fact that a worker may live on the farm where the operations are performed would not be a reason for disqualification. For example, if the other tests for the exemption are met, members of a tractor driver's family who reside on the farm could be employed in picking cotton within the terms of the exemption. Such family members would be considered to be commuting daily from their permanent residence despite the fact that their residence may be located on the farm at which they are employed.

§ 780.316 Thirteen week provision.

(a) The exemption provides that an "employee must have been employed in agriculture less than 13 weeks during the preceding calendar year." For purposes of determining whether a worker has been employed in agriculture less than 13 weeks during the preceding calendar year, a week is considered to be a fixed and regularly recurring period of 168 hours consisting of seven consecutive 24-hour periods during which the employee worked at least 1 "man-day." Section 3(u) of the Act defines a

man-day as "any day during which an employee performs any agricultural labor for not less than 1 hour."

(b) In defining the term "week" in this manner for purposes of section 13(a)(6)(C) (as well as section 3(e)(2)) comports with the traditional definition of week used in administering all the other provisions of the law. On this basis, the phrase "employed in agriculture less than 13 weeks" means that an employee has spent less than 13 weeks in agricultural work, regardless of the number of hours he worked during each one of the 13 weekly units. This position recognizes and accommodates to situations where an employee works very long as well as very short hours during the week. This would accord with the legislative history of this exemption which clearly indicates that it was meant to apply only to temporary workers whose hours of work would undoubtedly vary in length, and would, thereby effectuate the legislative intent.

(c) In determining the 13-week period, not only that work for the current employer in the preceding calendar year is counted, but also that agricultural work for all employers in the previous year. It is the total of all weeks of agricultural employment by the employee for all employers in the preceding calendar year that determines whether he meets the 13-week test. In this respect a self-employed farmer who works as a hand harvest laborer during part of the year is considered to be "employed" in agriculture only during those weeks when he is an employee of other farmers. Thus, such weeks of employment are to be counted but any weeks when he works only for himself are not counted toward the 13 weeks.

(d) The 13-week test applies to each individual worker. It does not apply on a family basis. To carry the example in the preceding section further, members of a tractor driver's family who reside on the farm could be employed in picking cotton within the terms of the exemption even though the driver had been employed in agriculture as much as 13 weeks in the previous calendar year, so long as the family members themselves had not.